

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1959 of 2000

to

FIRST APPEAL No 1974 of 2000

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT THRO' SPECIAL LAND ACQUISITION OFFICER

Versus

TRIBHOVANBHAI KESHAVLAL PATEL POA HOLDER OF NAVINCHANRA

Appearance:

MR ND GOHIL, AGP AND MR AJ DESAI FOR Appellants

MR AJ PATEL for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.C.PATEL

Date of decision: 19/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. These are appeals under section 54 of the Land Acquisition Act read with section 96, CPC at the instance of the State and the Acquiring Body, challenging the common judgement and awards passed by the Reference Court under section 18 of the said Act.

2. The lands in question were acquired for the purpose of Narmada Main Canal and are situated in the village Shiyapura, Taluka Kadi, District Mehsana. The notification under section 4 of the said Act was published on 18th April 1991.

3. As a result of the hearing and discussion, we find that this very Bench had decided two earlier groups of first appeals wherein the lands acquired were for the very same project viz. Narmada Main Canal, were acquired from the very same village viz. Shiyapura, and the date of section 4 notification was also identical viz. 18th April 1991. The aforesaid two decisions are in First Appeal Nos.1761 to 1774 of 2000 and 2802 to 2817 of 2000, both groups of first appeals having been decided by this very Bench (Coram: Y.B. Bhatt & M.C. Patel JJ), on 14th December 2000.

4. Under the aforesaid two decisions this Bench partly allowed the appeals filed by the State and the Acquiring Body and had reduced the market value of the acquired lands from Rs.28/- per square meter to Rs.26.60ps per square meter. Consequently the lands concerned in the present group of appeals must be valued at the same rate.

5. Learned counsel for the opponents is unable to indicate any feature of distinction as to why the aforesaid two decisions ought not to be followed.

6. Learned counsel for the appellants also attempted to urge before us the question of limitation. This contention does not merit serious consideration for the following reasons.

6.1 Firstly, the contention was raised in a vague and general manner before the Reference Court only by the State viz. the opponent no.1 therein. In fact as noted in the judgement of the Reference Court, the Acquiring

Body i.e. Appellant no.2 had not even filed a written statement. In these circumstances the Reference Court had not framed any issue pertaining to limitation. Consequently this question was not in controversy before the Reference Court at all, no evidence has been led thereon by either side, this question has not even been argued before the Reference Court, and consequently the Reference Court has not referred to this so-called controversy in its judgement. For this reason we find that this question sought to be raised before us does not merit any serious consideration.

7. However, one contention raised by the appellants herein deserves consideration. It was contended that in one of the land reference cases viz. LRC No.14/99, the claimant had sought additional compensation for the tubewell which existed on the acquired land. It is apparent on the record as also conceded by the learned counsel for the respondent-claimant, that the entire group of land reference cases involved lands which were irrigated lands, and that therefore the claimants had led evidence as to the valuation of the lands as irrigated lands. Moreover, the Reference Court has accepted this part of the evidence and has valued the lands as irrigated lands. Under the circumstances no separate compensation can be awarded for a tubewell which existed on the land of one of the claimants. This principle is well established by the Supreme Court in its decision in the case of State of Bihar Vs. Madheshwar Prasad, reported at (1996)6 SCC 197.

8. Consequently these appeals are partly allowed to the extent that the market value of the acquired lands is determined at Rs.26.60ps per square meter, upon which the claimants would be entitled to statutory allowances as per the Act. A further exception is made in the case of First Appeal No.1966/2000 (arising from Land Reference Case No.14/99) wherein the claimant shall not be entitled to compensation for the tubewell (valued by the Reference Court at Rs.1,72,000/-).

9. In the premises aforesaid this group of appeals is partly allowed with no order as to costs.

10. Decree accordingly.

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